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C O N F I D E N T I A L SECTION 01 OF 02 ISLAMABAD 001641

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TAGS: [PGOV](#) [PK](#) [PREL](#) [KJUS](#) [PHUM](#)

SUBJECT: RESTORATION OF JUDICIARY: DEADLOCKED FOR NOW

REF: A. LAHORE 193

[1](#)B. ISLAMABAD 1212

Classified By: Anne W. Patterson, Reasons 1.4 (b), (d)

[1](#)1. (C) Summary: After two intense days of personal negotiations, Pakistan People's Party (PPP) Co-Chair Asif Zardari and Pakistan Muslim League-N (PML-N) leader Nawaz Sharif remained deadlocked over the issue of how/when to restore the deposed judiciary. They continue to debate whether to restore the judges through a simple National Assembly resolution plus an executive order from the Law Minister or via a constitutional amendment. Also being discussed are the shape and timing of a package of constitutional reforms relating to the judiciary. Still unresolved is the fate of former Chief Justice Iftikhar Chaudhry. Interior Minister Malik is keeping NSA Tariq Aziz informed of every step of the negotiations; Musharraf's party leader has publicly stated conditional support for restoring the judges without commenting on the status of Iftikhar Chaudhry.

[1](#)2. (C) Zardari continues to oppose permanent restoration of Chaudhry to the bench, but it appears he has yet to find a formula that provides Nawaz with enough political cover to proceed with the plan. The lawyers' movement is betting that the PPP cannot withstand the political pressure and will agree to reinstate Chaudhry. NSA Aziz told Ambassador that relations between Zardari and Nawaz were beginning to fray badly over this issue, an observation that tracks with other reports from within the parties. Both Zardari and Nawaz have a lot to lose if the coalition falls apart less than a month after the new government was formed; in roundabout Pakistani fashion, they may yet find a solution. End summary.

Negotiations Continue

[1](#)3. (SBU) The leaders of Pakistan's coalition government -- Asif Zardari of Pakistan People's Party (PPP) and Nawaz Sharif of Pakistan Muslim League-N (PML-N) -- met April 22 in Islamabad for the second time in as many days; they have been trying to hammer out a compromise on restoration of the deposed judiciary. After admittedly "inconclusive" negotiations, Zardari and Sharif were content to reaffirm their "complete harmony" on the judiciary issue, providing no specifics. Surrogates were quick to claim that there was "no deadlock" between the parties.

[1](#)4. (SBU) PML-N's Sharif has been pushing for passage of such

a National Assembly restoration resolution before the current session adjourns April 25. The adjournment coincides with a 30-day deadline set by the Zardari-Sharif Murree Declaration of March 9 calling for restoration of the judiciary. In their joint April 22 press conference, Sharif would only say that restoration would come "soon," while Zardari rejected any "countdown."

#### The Outlines

15. (C) Zardari has apparently agreed to some form of resolution that would reinstate most of the judges. It is still unclear whether that resolution would be immediately followed by a reinstatement order from the Law Minister, as the PML-N insists, or whether the resolution would first be followed by a larger constitutional amendments package overhauling the country's judiciary, as advocated by the PPP.

16. (C) Sources from both parties have revealed that there continues to be differences on the draft of the resolution, mode of its implementation and strategy to deal with its possible implications. Noteworthy, however, Zardari has changed his lexicon, promising "restoration," not just "independence," of the judiciary, and the PPP's prior legal position, that a constitutional amendment would be needed to reverse President Pervez Musharraf's actions, has disappeared from public discourse. It appears the Supreme Court and provincial High Court benches will likely expand to accommodate both former and current judges.

#### The Real Sticking Point

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17. (C) Zardari sister and close political advisor, parliamentarian Azra Fazal Pechaho, told EmbOff April 21 that the real sticking point in the "inconclusive" negotiations was the future status and judicial powers of former Supreme Court Chief Justice Iftikhar Chaudhry. Pechaho railed against Chaudhry's "infamous corruption," and rhetorically asked: "How can we put that man back in charge?" Other PPP contacts have been more forthright in admitting that Chaudhry, with full suo moto powers, could threaten not just Musharraf's October 6, 2007, re-election, but could challenge the National Reconciliation Ordinance (NRO), the basis for the domestic and international dismissal of corruption charges against Zardari.

18. (C) All options mentioned have revolved around Chaudhry's fate. From "minus one, minus one," where both former and current chief justices would be reassigned, to "plus one, plus one," where Chaudhry would be reinstated, but Musharraf's eligibility for re-election would also be legally confirmed. PPP contacts also still mention a three-year term limit for chief justices; Chaudhry would be re-instated to the bench, but in June, would be demoted to Senior Justice.

#### Musharraf's Reaction

19. (C) NSA Tariq Aziz told Ambassador April 22 that Interior Minister Rehman Malik has kept him advised at every step of the negotiations. According to Malik, the issue of passing a simple National Assembly resolution vs. a constitutional amendment was still being debated. Aziz said if it ever came to a constitutional amendment and/or impeachment, he would urge Musharraf simply to resign. Aziz thought at that point Musharraf would agree. Like Zardari, Aziz is not convinced Chaudhry can be convinced to step down if reinstated; equally, there was little reason to expect current Chief Justice Dogar to quit. Aziz did not believe the "minus one, minus one" formula was practical.

¶10. (C) PML Opposition Leader Chaudhry Pervaiz Elahi called in special counsel April 22 to evaluate the legal options. PML Senator S.M. Zafer told Poloff that PML could live with "a resolution so long as it did not threaten Musharraf." Media is reporting PML President Chaudhry Shujaat Hussain as offering conditional support for a resolution restoring the judiciary.

#### The Lawyers Movement

¶11. (C) Supreme Court Bar Association President Aitzaz Ahsan told visiting DRL Assistant Secretary Kramer April 21 that the lawyers movement remains committed to restoration of all judiciary; his fellow lawyers at the lunch were unanimous in agreement. On April 22, Athar Minallah, attorney for the former Chief Justice, admitted to Poloff that the lawyers' movement had no contingency plan if all judges were not restored soon. He was convinced the PPP could not withstand the political pressure of not reinstating Chaudhry.

¶12. (C) Comment: Both Zardari and Nawaz have a lot to lose if the coalition falls apart over this issue less than a month after the new government was formed. If Nawaz were to quit, the PPP could go it alone but would need to make compromises to bring the Muttahida Quami Movement into the coalition and might have to woo additional members of Musharraf's party to retain a comfortable lead in the National Assembly. This would be a serious setback for plans of constitutional reform. For stability's sake, the good news is that the PPP is keeping Musharraf advised of the status of negotiations. We suspect that, in roundabout Pakistani fashion, Zardari and Nawaz will find a compromise.

PATTERSON